IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shantilal & Anr. v. Kanhaiyalal & Anr.

S.B.CIVIL WRIT PETITION NO.2239/2004
under Articles 226 and 227 of the Constitution of India.

Date of Order : 13th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sajjan Singh]
Mr. Durga Ram] for the petitioners.
Mr. P.S.Bhati, for the respondent.

BY THE COURT :

By this petition for writ a challenge is given to the validity and propriety of the order dated 19.10.2000 passed by learned Additional District Judge No.2, Udaipur in Civil Suit No.85/85, titled as Kanhaiyalal v. Smt. Bhuribai.

The non-petitioner plaintiff filed a suit against Smt. Bhuribai widow of Shri Bhawani Shankar Ameta seeking a decree for partition of alleged joint property claiming himself to be an adopted son of Shri Bhawani Shankar. Smt. Bhuribai denied the plaintiff's

claim with a specific assertion that Shri Bhawani Shankar never adopted the plaintiff as his son. Smt. Bhuribai before her death on 2.11.1991 sold the property in question to the present petitioners by a registered sale deed dated 12.9.1989, consequently the petitioners became party to the suit and are now the defendants.

The petitioners preferred an application under Order 6 Rule 17 read with Section 151 CPC seeking amendments in the written statement as according to them the date of death of Shri Bhawani Shankar was not 2.4.1976 as stated in the plaint but is 6.4.1976 and, therefore, date of "Dastoor Pagdi" must have taken place on 17.4.1976 and not on 14.4.1976. The petitioners also sought amendment in para 1-A and also desired for adding a new para 8 to the effect that no cause survives to pursue the present suit after death of defendant No.1 Smt. Bhuribai as the facts stated in plaint with regard to adoption itself become false due to change in date of "Dastoor Pagdi".

The trial court by order dated 19.10.2000 allowed the application preferred by the petitioner under Order 6 Rule 17 CPC to the extent it was pertaining to change in dates of death of Shri Bhawani Shankar and observance of ceremony of "Dastoor Pagdi", however, without assigning any reason the trial court

rejected the other amendments sought. Aggrieved by the same the instant petition for writ is filed under Article 227 of the Constitution of India by the defendant petitioners.

It is contended by counsel for the petitioners that the trial court by a most cryptic order denied for amendment in written statement which is nothing but a consequential effect and impact of the amendment allowed with regard to date of death of Shri Bhawani Shankar and with regard to observance of “Dastoor Pagdi”.

Heard counsel for the parties.

From perusal of the order impugned it is apparent that the trial court while rejecting the application for amendment in part has not given any reason. The trial court denied amendment sought by the petitioners in para 1-A and para 8 merely by saying that the same is not required. The order impugned, therefore, is certainly non-speaking and cryptic to the extent it denies amendment in para 1-A and addition of para 8 in written statement. The court, if deny any party from making amendment by rejecting an application moved for the purpose, the minimum requirement is that it should give reasons to do so. In the instant case the trial court has rejected the application without assigning any reason.

I have perused the order impugned and documents annexed with the writ petition including the application for amendment. The amendment sought by the petitioner in para 1-A and addition of para 8 appears to be essential in view of the amendments permitted by the trial court with regard to change of date of death of Shri Bhawani Shankar and the date with regard to observance of “Dastoor Pagdi”.

Accordingly, this petition for writ is allowed. The order impugned dated 19.10.2000 is set aside to the extent it denies the petitioners for making amendment in para 1-A and also denies for addition of para 8 in written statement. The application preferred by the petitioners defendant under Order 6 Rule 17 CPC which was subject matter of order dated 19.10.2000 is allowed in totality. The amendments sought be incorporated in written statement within a period of 60 days from today.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.